

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

GREG DEES

PLAINTIFF

v. Civil No. 05-3004

PACE INDUSTRIES, INC.

DEFENDANT

ORDER

On this 7th day of February 2006, the above referenced matter comes on for consideration. The Court, being well and sufficiently advised, finds and orders as follows:

1. On December 30, 2005, the defendant, Pace Industries, Inc. ("Pace") filed **Defendant's Motion to Dismiss for Failure to Prosecute** (doc. 18). In its motion, Pace states that:

* The plaintiff, Greg Dees ("Dees") failed to respond to its discovery requests in a timely manner.

* Pace filed a motion to compel discovery with the Court, which was granted on December 13, 2005. And,

* Dees has failed to abide by this Court's December 13, 2005 Order requiring Dees to provide initial disclosures and complete discovery responses within ten (10) days.

2. Pace's motion seeks dismissal of Dees' complaint with prejudice pursuant to Rules 37 and 41 of the Federal Rules of Civil Procedure, and requests sanctions against the plaintiff to reimburse the defendant for its attorneys' fees and costs incurred for the filing of Pace's motion and brief.

3. On January 24, 2006, Joseph Hughes, the attorney for

Dees, responded to Pace's motion. In his response, Hughes states that he has been unable to locate Dees, and requests thirty (30) days to continue to locate Dees.

4. The Court held a telephone conference call on January 26, 2006. During the conference call, the Court allowed plaintiff's counsel until Friday, February 3, 2006 to secure the presence of Dees for another telephone conference call. The Court noted that if plaintiff's counsel is not able to comply, plaintiff's complaint would be dismissed with prejudice.

5. According to communications between Joseph Hughes and Court personnel on Friday, February 3, 2006, Hughes has not been able to locate Dees and is unable to comply with this Court's January 26, 2006 directive.

6. Therefore, **Defendant's Motion to Dismiss for Failure to Prosecute** (doc. 18) should be, and it hereby is, **granted**. Plaintiff's complaint is **dismissed with prejudice**. See Fed. R. Civ. P. 37 and 41. Further, the Defendant will be allowed ten (10) days within which to submit a petition for attorneys' fees and costs.

IT IS SO ORDERED.

/S/JIMM LARRY HENDREN
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE